Filed 11/14/03 In re Davion C. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re DAVION C., a Person Coming Under the Juvenile Court Law.	B169245
TANJALIKA L., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent. _____ LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	(Super. Ct. No. CK 44086) (Veronica McBeth, Judge)

ORIGINAL PROCEEDING; petition for extraordinary writ. Writ denied.

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Ernesto P. Rey for Petitioner.

No appearance for Respondent.

Lloyd W. Pellman, County Counsel, and Kenneth E. Reynolds, Deputy County Counsel, for Real Party in Interest Department of Children and Family Services; joined by Law Offices of Lisa E. Mandel and Ann Cooney for Minor Davion C.

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Mother, T.L., seeks extraordinary writ review of an order terminating reunification services and setting a permanent plan hearing for Davion. (Welf. & Inst. Code, § 366.26; Cal. Rules of Court, rule 39.1B.)[1] Mother, who is incarcerated, claims the juvenile court erred in finding reasonable services had been provided her.[2] Davion joins in respondent's answer to Mother's petition.

BACKGROUND

Davion, Mother's fourth child, was born in mid-August 2002.[3] Mother was arrested and reportedly incarcerated for battery two weeks later.[4] Law enforcement personnel left Davion with a maternal aunt, who was unable to care for him. Ultimately, as a result of a hot-line phone call, respondent moved Davion to a foster home.

Mother was incarcerated in Twin Towers pending trial. She was eligible for two visits a week, but told the CSW she wanted to defer visits with Davion until after November 25, 2002, when, according to respondent's jurisdiction/disposition report, Mother might either be released and ordered into a recovery program or sentenced to prison. Mother said her defense lawyer was "leaning towards a recovery program."

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1 Additional statutory references and references to a "rule" are to the Welfare and Institutions Code and the California Rules of Court unless otherwise noted.

The alleged father, Ridgeway C., was a party below but has not filed a writ petition.

2 Respondent's first filing in opposition to the petition was a motion to dismiss on the ground that her lawyer, and not Mother, had signed the notice of intent to file a writ petition contrary to the mandate in rule 39.1B(f). In opposition, Mother's counsel filed a declaration explaining Mother had signed a notice of intent on the date of the section 366.21, subdivision (e) hearing, given it to him with directions to file a petition on her behalf, and that counsel misplaced the signed notice. Because Mother was incarcerated, counsel's declaration continues, he concluded it would not be possible to obtain her signature on a new form in the time required for filing under rule 39.1B(f). Accordingly, he signed and filed a timely notice of intent. Finding counsel's declaration presented good cause for Mother's failure to sign the filed notice, we deny respondent's motion.

3 Mother's three older children had been or were currently subjects of dependency petitions. Mother failed to reunify with any of them. One child died, apparently of Sudden Infant Death Syndrome, while in foster care. Another child was in the adoption process. Family reunification services were terminated in July 2001, and the third child was living with her father.

4 In a November 2002 interview, Mother told the Children's Social Worker she was incarcerated for assault with a deadly weapon, not battery. She was convicted of assault with a deadly weapon and sentenced to a three-year prison term in January 2003.

Mother wanted to avoid visits with a glass window between her and Davion "unless that [wa]s the only way" she could have visits.

The Detention Hearing. At the September 27, 2002, detention hearing, over respondent's objection, the court ordered family reunification services for Mother. The court granted respondent discretion to release Davion to any appropriate relative. Mother was granted monitored visitation. Respondent was ordered to facilitate one visit between Mother and Davion before the next hearing, on October 15.

For lack of a report, the pretrial resolution conference set for Davion on October 15 was continued to November 12. The court again ordered monitored visits for Mother. According to respondent's report, Jackie, Davion's half-sister who was living with her father and receiving family maintenance services, continued to want to visit Mother and usually visited her about once a month.

The Jurisdiction/Disposition Hearing. According to respondent's report for the November 12 jurisdiction/disposition hearing, Davion had not visited Mother since her incarceration. Respondent recommended monitored visits by an approved monitor for at least one hour a week. Mother admitted to a history of alcohol abuse and said she was intoxicated at the time of the assault. She still blamed respondent for her first son's death. The CSW recommended six months of reunification services.Mother's case plan was to consist of monitored visits and programs in substance abuse recovery, parenting, anger management, and a 12-step program, with random drug testing.

On November 12, Mother signed a waiver of trial rights, submitting on the petition and the CSW's report. Mother also signed a case plan. The court sustained the amended petition. The court ordered respondent to explore a Thanksgiving visit at Twin Towers and ordered that Mother's parenting, anger management and 12-step programs begin there. Mother was to have monitored visitation with respondent's discretion to liberalize.

On January 13, 2002, Mother was sentenced to a three-year prison term and transferred to the Central California Women's Facility in Chowchilla. As of the CSW's mid-May report, nine-month-old Davion was teething. Mother told the CSW she

believed she might only have to serve approximately one year. Respondent tried unsuccessfully to contact Mother's recently assigned counselor and the prison's records department to confirm mother's sentence.

Mother had been unable to enroll in any of the court-ordered programs because of waiting lists and a referral process. She had expressed great interest in the Mother Infant Program (MIP). Mother said that before her transfer to Chowchilla, she was enrolled in parenting and personal relationship programs at Twin Towers. Mother had asked to enter a drug and alcohol treatment program and the MIP at Chowchilla. The enrollment process generally took about three to six months.

The CSW had spoken with the MIP coordinator at Chowchilla, who said Mother asked her to contact the CSW and discuss the program. The coordinator said the program was a treatment facility that allowed inmates to finish their sentence while being with their children. The program had "very strict" criteria; a participant could not have committed a violent crime or have a history of violent behavior.[5] In order for Mother to begin the application process, respondent had to submit authorization and consent to her participation. Respondent recommended that reunification services be terminated in light of Mother's loss of her other children and her criminal history. Respondent concluded MIP was unsuitable because respondent would be unable to evaluate Mother's mental capacity and child-care ability as to Davion before he would have to be released to her care in the program. The program offered only placement services, not reunification. It was designed for mothers ready to regain custody who have been assessed to be appropriate caregivers with structured help. Respondent recommended that reunification services be terminated in light of Mother's failure to reunify with her two daughters despite roughly 12 months of reunification services and her criminal history.

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5 According to undisputed material in respondent's reports, Mother's criminal history included a 2001 felony conviction of assault with a deadly weapon, not a firearm, with great bodily injury, for which she was sentenced to 120 days in jail, and three misdemeanor convictions, including a battery for which she was placed on probation.

Mother's single visit with Davion at Twin Towers occurred with them separated by a glass wall. (The second visit, arranged by the CSW, occurred after a court hearing in June 2003.) At the CSW's request, the foster family agency social worker tried but failed to arrange another visit at Twin Towers, because Mother had been transferred to Chowchilla. Mother had the foster family's home phone number, but had to make collect calls, and the foster family did not accept the charges. The foster family's address was confidential. Nothing in the record shows Mother sent letters to Davion or the foster family via the CSW.

Mother's letters to the CSW expressed her desire to visit with Davion, her interest in MIP and her wish to be a mother to Davion. Respondent's attempts to provide family reunification services had been difficult because of her prison sentence and the program waiting lists. Three attempts to ask about Mother's release date had been unsuccessful. (During Mother's incarceration in Chowchilla, attempts to reach Mother's frequently-changing counselors by phone had produced mixed results after numerous attempts by the CSW.) Respondent recommended termination of reunification services for both parents pursuant to section 361.5.

The Six-Month Review Hearing. The report for the section 366.21, subd. (e), hearing stated Mother's anticipated release date was March 5, 2004. The CSW had been unable to reach Mother's prison counselor. The matter was set for contest. The court ordered a progress report concerning Mother's progress and completion of the court-ordered programs, what programs had been available during her incarceration, and in what programs she had participated. The court also ordered respondent to use best efforts to investigate monitored visits for Davion and Jackie (who had been removed from her father's custody) and at least one monitored visit between Mother and Davion before the July 17 hearing date.

Davion continued to thrive with his foster parents, who had expressed a desire to adopt him. At the June 2003 visit, Davion was friendly toward Mother; he cooed and hit the glass. "Mother was concerned that Davion did not recognize her, however [the] CSW

explained to mother that the parent/child bond is so significant that it is very possible that Davion knows her."

The CSW had made many phone calls to the prison seeking information concerning Mother's programs and progress. She finally reached Mother's current prison counselor on July 10. Having received a faxed written request for the desired information, the counselor left a message stating Mother was enrolled in an educational program and a substance abuse program. He was leaving for vacation and would not be available until July 24. He left no enrollment dates or comments on Mother's progress. The CSW tracked down the counselor's supervisor, who told her Mother initially enrolled in the two programs on May 2, 2003.

The CSW contacted the education department at Twin Towers and was told Mother had completed 20 hours of parenting/child development, 8 hours of drug education, five hours of high school subjects and 3 hours on personal relationships while there.

The CSW had been informed that the distance to Chowchilla from Lancaster was over 233 miles and the travel time just over 4 hours. She gathered information concerning visits from three sources at Chowchilla. She spoke with the foster family agency social worker, who said she had driven with Davion for about an hour and that he was "very fussy and anxious to get out of the car." She jokingly told his foster parents she would never again drive him. The CSW spoke with Davion's foster parents, who lived 75 miles south of Lancaster. The foster mother said she did not believe Davion would be "an easy child" during such a drive. Although he might sleep during some of the drive he was "very energetic and d[id] not like to sit still for that long." The CSW's own observations of Davion confirmed these evaluations. She commented that a trip of such a distance would not be easy for any 10-month-old and that Davion was very energetic and active.

Mother testified she had written five letters in the preceding four months and that the CSW replied only when a court date approached. Mother said she did not hear exactly what the court had ordered her to do and did not recall signing a form concerning

parenting education. She had not had the opportunity to complete any programs while in custody.

The CSW testified she was assigned Davion's case in October 2002. Before she prepared the disposition report, Mother had told her Mother was to be released and her case dismissed. While Mother was at Twin Towers they spoke at least two or three times a month. The "Title XX's" did not reflect all the phone contacts. In 2002, she visited Mother once; another CSW visited another time. Respondent did not approve Mother's placement in MIP because it was a placement program rather than a gradual reunification program. The CSW understood that in order for a mother and child to be placed in the program, respondent would have to state there was no risk to the child by being put in the mother's care. Part of the program involved relocating Mother to a community setting not located at the prison. There were no visits between Mother and Davion at Chowchilla. Respondent wrote three letters to Mother in eight months. The CSW did not send Mother a list of referrals because Mother's letters and the CSW's conversations with Mother's counselor led the CSW to conclude that Mother was aware of all the classes available at Chowchilla.

Counsel for Davion joined in respondent's request that reunification services be terminated based on the evidence before the court, Davion's young age (11 months), and because Mother would be incarcerated beyond the 18-month date. The court terminated reunification services for both Mother and the alleged Father and set the matter for a permanency planning hearing.

DISCUSSION

We review a finding that reunification services are reasonable under the substantial evidence standard. (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 329.) We look only at whether any evidence, contradicted or uncontradicted, supports the juvenile court's determination. We resolve all conflicts in support of the determination and indulge in all legitimate inferences to uphold the court's order. We may not substitute our deductions for those of the trier of fact. (*In re Katrina C.* (1988) 201 Cal.App.3d

540, 547; *In re John V.* (1992) 5 Cal.App.4th 1201, 1212.) We recognize that in most cases more services might have been provided and that the services provided are often imperfect. The standard is not whether the services provided were the best that might have been provided, but whether they were reasonable under the circumstances. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 547.)

The record reflects that these proceedings were skewed from the beginning. Davion was detained in late September 2002, at the age of approximately six weeks. An emergency response CSW filed the detention report which listed a prior child welfare history of general neglect in June 1999 and July 2000, and caretaker absence in December 2000, all three of which were "substantiated." The record does not tell us why respondent objected to the court-ordered reunification services at the September 27, 2000, detention hearing or on what ground(s) respondent objected to that order. Nor can we learn the court's reasons for overruling the objection because Mother has not provided us a reporter's transcript of that hearing. On later-confirmed, undisputed facts concerning Mother's history with her children, had the court been fully informed when considering whether to order reunification services, the court might well have denied reunification services altogether on the ground that Mother had failed to reunify with Davion's two half-sisters. (§ 361.5, subd. (b)(10).)[6]

Mother's optimistic reports regarding disposition of the criminal charges against her contributed heavily to the tangled progress of this matter. Before the November 12 jurisdiction/disposition hearing, the outcome of Mother's criminal case was unknown. Mother had told the CSW that, according to her defense lawyer, she could be released. Mother also told the CSW she wanted to avoid Twin Towers visitations separated by

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6 Section 361.5, subdivision (b)(10) provides that reunification services need not be provided to a parent when the court finds, by clear and convincing evidence that "the court ordered termination of reunification services for any siblings or half-siblings of the child because the parent . . . failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent . . . and that parent . . . is the same parent . . . described in subdivision (a) and that, according to the findings of the court, this parent . . . has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from that parent . . . ."

glass from Davion unless that was the only way to have a visit. After the case plan was formulated on November 12, Mother told the CSW her lawyer anticipated a dismissal of her case. On January 2, 2003, she told the CSW her case had been "dropped" and she had a probation hearing on January 6. On January 13, Mother told the CSW she had been sentenced to three years, but would "probably only do 1 year."

We need not speculate as to what the juvenile court would have ordered had it known Mother would be sentenced to a three-year prison term. After the CSW's numerous, fruitless attempts to learn of Mother's anticipated release date, she was finally able to include that date in the six-month review hearing report: March 5, 2004. At the six-month review hearing (§ 366.21, subd. (e)), the court said, "[A]t the time this case came to court for detention, had we known how long mother was going to be incarcerated, we would not have offered family reunification services because she wouldn't have been available to receive them in the period. That is the thing that just doesn't seem to -- and so the Department recommended that we give reunification services."

The court continued with its statement. It had read the CSW's service logs and declined to fault respondent for not seeking a change in the court's visitation order, noting that even when the CSW realized Mother was not going to be released in time to reunify, the CSW continued to communicate with Mother and her prison counselors. "Mother was not going to be able to reunify with that child at the 12-month date. I could not make those findings. Not in good conscience. Even if she had visits, I couldn't have said within the statutory period she would be able to receive that child in her home. Absolutely, I could not make that finding."

The court observed that the drive to Chowchilla was "a considerable distance" and added with respect to Mother's desire to enter the off-site MIP that "I wouldn't say mother could have the child if it weren't in a structured situation." The court found reasonable services had been provided and that Mother was not going to be out of custody timely. The court further observed that the early March 2004 release date had not been confirmed. The court terminated both parents' parental rights.

Mother analogizes these proceedings to what occurred in *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, in which our colleagues in Division Five concluded no substantial evidence established reasonable reunification services were offered or provided to an incarcerated father. The analogy fails. In contrast to this matter, in *Mark N.*, it was undisputed respondent made no effort to determine whether services were available to father and never contacted any institution to determine the availability of services to him. Similar meaningful dissimilarities include respondent's failure in *Mark N.* to determine whether appropriate services were available at the institution and the social worker's statement, when asked what resources were available to an incarcerated parent, was "None that I am aware of." (*Id.* at p. 1007.) In *Mark N.*, father reported no services were available to him because of his prison housing, and respondent did nothing to pursue what services might have been arranged for him. Here, the CSW investigated and evaluated the appropriateness of Mother's request to be included in the MIP.

Bearing in mind all the circumstances of this matter, the dependency law's core concern for the best interests of the child, and the prospect of a stable, loving permanent home for Davion in which he has been thriving with his initial foster family, we conclude substantial evidence supported the trial court's ruling that respondent provided reasonable reunification services.

DISPOSITION

The petition is denied.

NOT TO BE PUBLISHED.

ORTEGA, J.

We concur:

SPENCER, P.J. MALLANO, J.